

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1643 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ARDHENDU SHEKHAR ROY

Versus

DINESHBHAI DALSUKHBHAI ZAVERI

Appearance:

MR BN KESHWANI for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/12/1999

ORAL JUDGEMENT

#. This civil revision application arises from the order of the court below dated 26th June 1995 under which Summary Suit No.285 of 1994 in the Court of Civil Judge (J.D.) Vadodara, was ordered to be restored by setting

aside the exparte decree passed on 30.11.94 therein.

#. Relying on the decision of the Punjab High Court in the case of Rishi Kesh Badri Parshad v. Kidar Nath Hargu Lal reported in AIR 1957 PUNJAB 38 the learned counsel for the petitioner contended that it is a case where the learned trial court should not have interfered in the matter.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. I do not find any illegality in the approach of the court below nor it can be said to be a case where the court below has committed any material irregularity in exercise of its jurisdiction to hold that the Bailiff has contravened the provisions of Order 5, Rule 17 of Civil Procedure Code. Where the Bailiff did not find the addressee of the summons at the place, he may be justified to affix the same but he should take all the care and caution that the provisions as contained in Order 5, Rule 17 of the Civil Procedure Code are scrupulously followed. This affixing of summons should have been in presence of two witnesses and it is the duty to give addresses of two witnesses on record which has not been done in the present case and this position is also not controverted by the learned counsel for the petitioner. In view of this admitted position, it is a case where the court below has not committed error in case the service of summons for judgment was taken to be not proper.

#. The learned counsel for the petitioner then contended that this is a suit under Order 37 of the Civil Procedure Code and not an ordinary suit and for its trial, different procedure is provided.

#. I do not find any substance in this contention. The summons for judgment are to be served strictly in compliance of provisions of the civil procedure code. It is true that Bailiff has undertaken the exercise of service of summons but when the defendant-respondent was not available and he sought to affix this notice, he has to meticulously comply with the provisions and taken all the care that there remains no illegality in service of summons. It has not been done. Moreover, I fail to see how any prejudice is caused to the plaintiff-petitioner in case this impugned order is allowed to stand. Still, the plaintiff has opportunity to prove his case. This case does not fall also under any of the sub clauses (a), (b) or (c) of sub-section 1 of Section 115 of the Civil

Procedure Code. It is just and reasonable order passed by the court below to which no exception can be made. The case on which reliance has been placed is of little help to the petitioner in this case.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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[sunil]